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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,527	07/18/2003	Conrad Klotz	1671-0271/DEP-5126	2804
7590	03/09/2005		EXAMINER	
Paul J. Maginot Maginot, Moore & Bowman, LLP Bank One Center/Tower 111 Monument Circle, Suite 3000 Indianapolis, IN 46204-5115				LINDSEY, RODNEY M
		ART UNIT	PAPER NUMBER	3765
DATE MAILED: 03/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/622,527	KLOTZ ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Rodney M. Lindsey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 35 is/are allowed.
- 6) Claim(s) 1-34 and 36 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/26/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the mailing address of each inventor. A mailing address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing address should include the ZIP Code designation. The mailing address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-8, 10, 11, 18-21, 34 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Diaz et al. With respect to claim 1 note the head gear apparatus comprising a helmet 12 with two airflow passages 76, 78 and fan 50. With respect to claims 2, 3, 8, 10, 11 and 36 note paragraph [0051] and airflow adjusting means/mechanism 82. With respect to claim 4 note the conduit as defined by channel 26 extending from the fan to the forehead at 76. With respect to claim 5 note the portals at 78 in Figure 10. With respect to claims 6 and 7 the blade 84

Art Unit: 3765

is equivalent to a baffle as claimed. With respect to claim 18 note the helmet 12, passageways 76, 78, fan 50 and the strap assembly including headband 142, strap arrangement 150 and occipital support 130. With respect to claim 19 note Figure 3 at 144 and the connection to occipital support 130. With respect to claim 20 note paragraph [0078] and the adjustment of the strap with the corresponding adjustment of the occipital support 130. With respect to claim 21 note Figure 10 and the openings in the occipital support 130 defining a lattice configuration. With respect to claim 34 note the helmet 12, passageways 76, 78, fan assembly including inlet opening 64 and fan 50, face shield 96 and shroud 88 including filter element 94 overlaying the inlet opening 64 and defining an area greater than that of the inlet opening 64.

4. Claim 13 is rejected under 35 U.S.C. 102(e) as being anticipated by Green et al. (6,792,944). With respect to claim 13 note helmet 100, 150 with passageways defined by fins 102, 103, fan 108 and strap assembly including headband 175 and strap arrangement 179.

5. Claim 22 is rejected under 35 U.S.C. 102(e) as being anticipated by Wilson et al. (6,847,492). Note the helmet in Figures 1 and 2, the face shield 55 and the film layers at 15.

6. Claims 28-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Rudd. With respect to claim 28 note the head gear apparatus comprising a helmet 10, 16, 22 including a chin bar at 22, a face opening 28 and a chin bar slot 42, and a face shield 34 with a tab 38 for engagement within the slot 42. With respect to claim 29 note Figure 1 of Rudd and the continuous nature of the chin bar defined by 22. With respect to claim 30 note the ledge as at 32. With respect to claim 31 note the upper edge as at 36 of the face shield 34 and the upper ledge as at 30 of the helmet.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diaz et al. in view of Hong. Diaz et al. do not teach a louver plate to control airflow through the portals. Hong teaches old and well known to those of ordinary skill in the art of helmet ventilation the use of louver plates 100 to control airflow through portals 98. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the apparatus of Diaz et al. with the louver plate 100 of Hong to achieve the advantage of adjustably controlling the airflow through the portals.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diaz et al. in view of Odell et al. Diaz et al. do not teach the use of a lithium ion type battery. Odell et al. teach old the use of a lithium ion type battery (see column 5, lines 1-10). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the apparatus of Diaz et al. with the lithium battery of Odell et al. to achieve the advantage of accommodating a long shelf life for the apparatus.

10. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. '944 in view of Anderson. With respect to claim 14 Green et al. do not teach an attachment tab extending from sides of the crown strap. Anderson teaches old the use of such tabs as at 40, 42. It would have been obvious to one of ordinary skill in the art at the time of the invention to

Art Unit: 3765

substitute the strap assembly having tabs 40, 42 of Anderson for that of Green et al. to achieve an alternative strap arrangement where the formation of the tabs is simplified by integrally forming them from the crown strap. With respect to claim 15 note the teaching in Anderson of the pair of crown straps 36, 38 permitting adjustment of the length of the crown strap. With respect to claim 16 note the cutout shown in Figure 7 of Anderson. With respect to claim 17 note Figure 7 and column 2, lines 38-43 of Anderson and the details of the tab 42.

11. Claims 23-27, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stackhouse et al. (4,901,716) in view of Yang. With respect to claim 23 Stackhouse et al. show a helmet 10 with a chin bar 26 and a face opening above the chin bar 26, a face shield 40 and VELCRO holding elements 24, 48 between the face shield and chin bar. Stackhouse et al. do not teach the holding elements being magnetic elements. Yang teaches old the alternative use of magnetic elements (see column 5, lines 42-46) and VELCRO elements 25, 26. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute magnetic elements for VELCRO elements in Stackhouse et al. in the manner of Yang to achieve a like result of coupling the face shield to the helmet. With respect to claim 24 note the chin bar as shown in Figure 1 of Stackhouse et al. With respect to claim 25 the number and location of the magnetic elements would have been considered an obvious matter of choice and design to one of ordinary skill in the art at the time of the invention since all that would have been critical is that a sufficient number of magnetic elements be provided for effecting the coupling between the face shield and helmet. With respect to claim 26 contrast Figures 5 and 6 of Stackhouse et al. and the resulting alignment of the face opening and face shield. With respect to claims 27, 32 and 33 the magnetic elements taught by Yang are equivalent to magnets and slugs as claimed.

***Allowable Subject Matter***

12. Claim 35 is allowed.

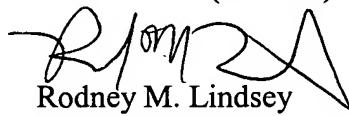
***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the fan arrangements of Her-Mou '500 and Paris et al., the strap constructions of Forney, Luczenbacher, Sr. et al. and Larson, the shield covers of Wilson et al. '045 and Wiseman, Sr. and the nape straps of Bowers, Jr., Marchello, Alesi, Morgan and Erlendson.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765